IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITR No.19 of 1990
Date of decision:20.9.2006

The Commissioner of Income Tax, Patiala.

....Petitioner

versus

M/s Pardeep Kumar C/o Magh Raj Tapa

Respondent.

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Dr. N.L.Sharda, Advocate, for the revenue.

JUDGMENT:

Following question has been referred for opinion of this Court by the Income Tax Appellate Tribunal, Chandigarh Bench, Chandigarh, arising out of its orders dated 11.7.1988 in ITA No.737/chandi/85, in respect of assessment year 1982-83 and dated 24.5.1989 in ITA No.695/Chandi/88, in respect of assessment year 1983-84:-

> "Whether, on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in holding that depreciation on truck is allowable even if it was not registered with the transport authority under the Motor Vehicles Act in the name of the assessee and as such he was not the owner?"

Facts noticed by the Tribunal in the statement of case are:

> "Assessment in this case was completed under section 143 (3) at an income of Rs.85,230/- by the Income Tax Officer, Barnale. The assessee has claimed depreciation of Rs.67000/- on the cost price of truck amounting to Rs.2.32,030/-. During the course of assessment proceedings, it was noticed by the Income Tax Officer that the truck was purchased by Shri Vijay Kumar and was registered in his name with the transport authorities. Later

> on, the ownership of the truck is alleged to have been transferred to the assessee vide agreement dated 17.11.1981 without getting the ownership transferred in the records of transport authorities. The Income Tax Officer did not allow the depreciation on truck on the plea that since under the Transport Act, then ownership of a vehicle vests with a person in whose name it is registered and depreciation is allowable under the provisions of section 32(i) of the income Tax Act, 1961 only when the vehicle is owned by the assessee."

On appeal, the view of the Assessing Officer was upheld but on further appeal, the Tribunal reversed the said view and held that the assessee was real owner for all intents and purposes. Registration was not a condition requisite for acquisition of ownership of the motor vehicle.

We have heard learned counsel for the revenue and perused the record of the case.

We find that the view taken by the tribunal is consistent with the view taken by the Hon'ble Supreme Court in ***T.V. Jose v. Chacko P.M. & others*** AIR (2001) SC 3939, wherein it was observed:-

> "**10.** We agree with Mr. Iyer that the High Court was not right in holding that the Appellant continued to be the owner as the name had not been changed in the records of R.T.O. There can be transfer of title by payment of consideration and delivery of the car."

In view of the above, the question referred is decided against the revenue and in favour of the assessee.

Reference is disposed of accordingly.

(Adarsh Kumar Goel)
Judge

Sept.20, 2006 (Rajesh Bindal)
'gs' Judge